

In the present case, independent claim 1 was not amended in the Amendment Under 37 C.F.R. §1.116 previously filed on October 23, 2006.<sup>1</sup> Further, the Examiner relied on newly cited U.S. Patent No. 5,016,988 (*Imura*) in rejecting independent claim 1 under 35 U.S.C. §103(a). *Imura* was not submitted by Applicants in an information disclosure statement filed under 37 CFR §1.97(c), but rather was cited by the Examiner.

In the Advisory Action mailed November 9, 2006 at pages 5 and 6, the Examiner asserted the following:

Applicant is respectfully apprised that US 5,016,988 is evidence that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the first embodiment of Yamahara with the second embodiment of Yamahara, by changing the  $\theta$  angle from 20° to 0°, and thus to change the angle between the second direction and the direction normal to the xy plane of the transparent support, from 70° to 90° for the purpose of providing the desired refractive index ellipsoid, and hence the desired phase retardation.

Thus, the Examiner relied on *Imura* in support of its assertion that it would have been obvious to modify U.S. Patent No. 6,839,110 (*Yamahara et al*) in the manner alleged in the Advisory Action. For at least this reason, the finality of the rejection is improper.

Furthermore, even if the Examiner maintained the obviousness rejection based on *Yamahara et al* alone, the Examiner nevertheless cited and relied on *Imura* in further support of the obviousness rejection. Such citation and reliance on *Imura* raises a new ground of rejection that was neither necessitated by Applicants' amendment of the claims nor based on information submitted by Applicants in an Information Disclosure Statement.

Accordingly, for at least the reasons set forth above, withdrawal of the finality of the Official Action is respectfully requested.

---

<sup>1</sup> The only claim amendment set forth in the previously filed Amendment Under 37 C.F.R. §1.116 was to correct the dependency of claim 6.

If there are any questions concerning this filing, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: November 22, 2006

By: 

Roger H. Lee

Registration No. 46317

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620